

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION**

**OGEECHEE-CANOOCHEE RIVERKEEPER,
INC.,**

Plaintiff,

v.

608CV064

**T.C. LOGGING, INC.; HENRY THOMAS
CLARK, LOW COUNTRY LAND
CLEARING, LLC; LOW COUNTRY LAND
AND EXCAVATING, INC.; RSM
ENVIRONMENTAL LAND CLEARING,
INC.; and NICHOLAS R. PERKINS,**

Defendants.

ORDER

On August 4, 2009, this Court granted plaintiff Ogeechee-Canoochee Riverkeeper's ("OCRK") motion for summary judgment against defendants T.C. Logging, Inc., and Henry Clark for violating the Clean Water Act ("CWA"), 33 U.S.C. §§ 1311(a) & 1344, by discharging dredged and fill material into waters of the United States without a permit. Doc. # 59. As to the other defendants – Low Country Land Clearing, LLC, Low Country Land and Excavating, Inc., RSM Environmental Land Clearing, Inc., and Nicholas R. Perkins (collectively the "Subcontractors," or the "Subcontractor defendants") – the Court found that "[t]he subcontractors have not appeared in this action and there is no record of a waiver or return of service on the docket. As far as the Court can tell, these parties have not been served." *Id.* at 1 n.1. Thus, the Court "refrain[ed] from ruling on the liability of the subcontractors until it is clear that they were

properly served and are under the jurisdiction of the Court." *Id.* at 10 n.5.

OCRK has since filed a notice with the Court demonstrating that the Subcontractor defendants were in fact served and that affidavits of service were included in a previous filing. Doc. # 60 (notice), # 34 (11/12/08 filing, which contained affidavits of service for these defendants).

As the Subcontractor defendants have not defended against this action, an F.R.Civ.P. 55(a) entry of default is appropriate. Once entered, OCRK may move for a default judgment against the Subcontractor defendants.¹ However, OCRK will have to point to specific evidence supporting its claim that the Subcontractor defendants were in fact the parties employed by T.C. Logging to construct the road that resulted in the CWA violation.²

¹ While OCRK sought summary judgment against the Subcontractor defendants, it alternatively moved for an entry of default. Doc. # 46 at 2 n.1. OCRK has not formally moved for a default judgment.

² As it stands, the Court is unable to locate any evidence within OCRK's summary judgment motion (or elsewhere in the record) directly identifying Low Country Land Clearing, LLC, Low Country Land and Excavating, Inc., RSM Environmental Land Clearing, Inc., and/or Nicholas R. Perkins as the entities that performed the work on the road. *See, e.g.*, T.C. Logging's Response to First Set of Interrogatories, doc. # 46-4 at ¶ 3 (identifying entities who performed work on the road as "those individuals already named as Defendants in the subject action"); Defendant T.C. Logging's Answer to Complaint, doc. # 41 at ¶¶ 11-14 (alleging insufficient knowledge or information as to allegations against Subcontractor defendants); Agency Redetermination Letter, doc. # 46-6 at 4 (identifying entities involved in road construction as "T.C. Logging, its agents or contractors"); T.C. Logging's Response to Request for Admission, doc. # 46-3 at ¶ 6 (admitting that "TC Logging and/or those who performed worked [sic] for TC Logging began placing fill material in wetlands for the purpose of constructing a road").

The Court orders that the following defendants shall be **ENTERED INTO DEFAULT**: Low Country Land Clearing, LLC, Low Country Land and Excavating, Inc., RSM Environmental Land Clearing, Inc., and Nicholas R. Perkins.

This 24th day of August 2009

A handwritten signature in black ink, appearing to read "B. Avant Edenfield", is written over a horizontal line.

B. AVANT EDENFIELD, JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA